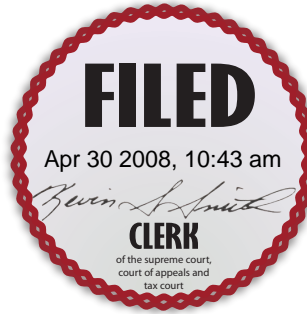


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

AMY K. NOE
Allen Wellman McNew
Richmond, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MARJORIE LAWYER-SMITH
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CRAIG N. REVETER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 89A04-0708-CR-463

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Gregory A. Horn, Judge
Cause No. 89D02-0608-FB-026

April 30, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Craig Reveter (“Reveter”) was convicted in Wayne Superior Court of Class B felony dealing in cocaine and sentenced to seventeen years in the Indiana Department of Correction. Reveter appeals and argues that the trial court improperly admitted evidence of his prior misconduct.

We affirm.

Facts and Procedural History

On August 2, 2006, the Wayne County Drug Task Force conducted a controlled buy between Reveter and a confidential informant known as C.I. 961 (“The C.I.”). The C.I. contacted Reveter and arranged to purchase one gram of cocaine for fifty dollars at a local license branch. However, at the last minute, the meeting place changed to a local motor scooter store. The C.I. drove to the store in a vehicle provided by the police with three twenty-dollar bills. The police also outfitted her and the car with audio and video recording devices. The C.I. arrived at the store followed by two officers in other vehicles. Reveter had already arrived in a car driven by Casie Nicole Fox (“Fox”). Reveter exited his vehicle and entered the C.I.’s car. After a minute, Reveter left the C.I.’s vehicle and returned to his own. The C.I. and the officers returned to the task force office, where the officers took possession of the recordings, the ten-dollar bill, and a plastic bag containing cocaine.

On August 17, 2006, Reveter was charged with Class B felony dealing in cocaine. On May 11, 2007, the trial court granted a motion in limine regarding any prior misconduct committed by Reveter. On June 4, 2007, a two-day jury trial commenced. During the State’s direct examination of Fox, Fox testified that Reveter had called her the

day before trial and asked her to say that the money given as change to the C.I. belonged to Fox, which Fox refused to do because it was not true. Tr. pp. 299-300. On cross-examination by defense counsel, the following exchange occurred:

Q. When, when you claimed my client called you over the weekend or on June the 3rd, was that, the extent to which you testified today was that the, was that the entirety of the conversation, was it real quick?

A. Yeah.

Q. My client never said, I dealt drugs, did he?

A. No.

Q. When you were, and I'm talking specifically with regard to this transaction, he never said I dealt drugs to C.I. 961, did he?

A. No.

Tr. p. 303.

In response to this colloquy, the State moved to lift the motion in limine regarding Reveter's prior misconduct. The trial court agreed to lift the order with regard to Fox alone over Reveter's objection. Fox then testified that in June, July and up to August 2, 2006, she purchased cocaine from Reveter "every day, every couple days." Tr. p. 313. The jury returned a verdict of guilty. The trial court sentenced Reveter to seventeen years.

Discussion and Decision

Reverter argues that the trial court erred when it admitted evidence of Reverter's prior misconduct after Reverter allegedly opened the door to that admission. The admission and exclusion of evidence lies within the sound discretion of the trial court; therefore we review admission of testimony for abuse of that discretion. State v. Lloyd, 800 N.E.2d 196, 198 (Ind. Ct. App. 2003). Such an abuse occurs when the "decision is clearly against the logic and effect of the facts and circumstances." Id.

Ind. Evidence Rule 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pre-trial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

The purpose of Evid. Rule 404(b) is to prevent the jury from making the “forbidden inference” that the defendant had a “criminal propensity and therefore engaged in the charged conduct.” Wertz v.State, 771 N.E.2d 677, 683 (Ind. Ct. App. 2002). If a defendant alleges that the admission of evidence violated Evidence Rule 404(b), we: “(1) determine whether evidence of prior bad acts is relevant to a matter at issue other than the defendant’s propensity to commit the charged act; and (2) balance the probative value of such evidence against its prejudicial effect.” Id. at 684. We review the balancing for abuse of discretion. Jackson v. State, 728 N.E.2d 147, 152 (Ind. 2000). Additionally, evidence otherwise inadmissible under Evidence Rule 404(b) may become admissible where the defendant “opens the door” to questioning on that evidence. Id.

Reveter argues that he did not open the door to this testimony because the question did not “leave the trier of fact with a false or misleading impression of the facts related.” Id. He argued that the question related to the phone call he made to Fox the day before trial. Since the question was so limited, he argues that testimony related to prior drug purchases was inadmissible.

We must disagree. The question asked by Reveter could easily have led the jury to believe that he never sold drugs. The trial court acted within its discretion to

determine that the question created a false or misleading impression that Reveter did not deal drugs. The trial court limited the testimony to Fox's own drug purchases from Reveter. The limited testimony served to rebut the impression that Reveter did not deal drugs. The testimony was necessary to rebut the false impression created by Reveter's question regarding his prior drug sales.

Even if we were to determine that Fox's testimony about prior drug purchases from Reveter was inadmissible, the error would be harmless. If the trial court has erred in the admission of evidence, we will not reverse the conviction if that error was harmless. Cooley v. State, 682 N.E.2d 1277, 1282 (Ind. 1997). An error in including evidence does not require a reversal if "its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect the defendant's substantial rights." Hardin v. State, 611 N.E.2d 123, 131 (Ind. 1993).

The probable impact of Fox's testimony on the jury is so minor that Reveter's substantial rights are not affected. The testimony of the C.I. regarding her purchase of cocaine from Reveter in conjunction with the video and audio recordings provided sufficient evidence for the jury to determine that Reveter sold cocaine to the C.I. We therefore conclude that the admission of Fox's testimony was harmless.

Affirmed.

MAY, J., and VAIDIK, J., concur.